

2018 State of the Judiciary

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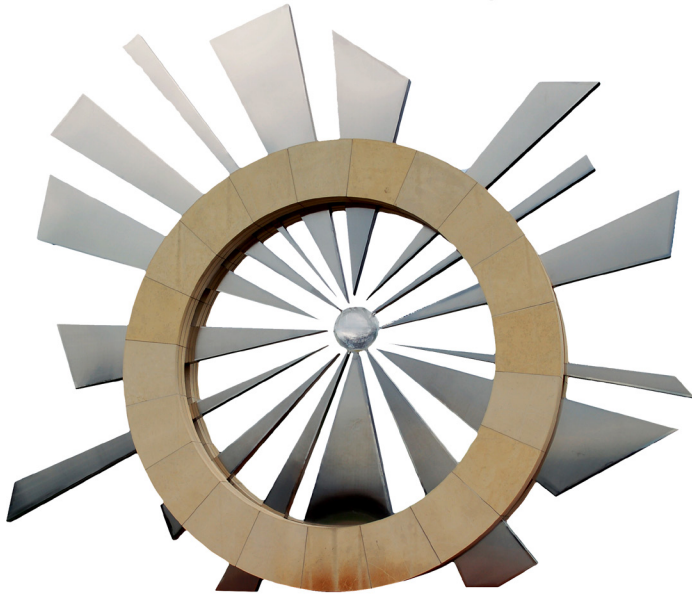
Chief Justice of the Iowa Supreme Court

Wednesday, January 10, 2018



SHATTERING SILENCE

2018 is the 150th anniversary of the Iowa Supreme Court case *Clark v. Board of Directors*. The case involved a 12-year-old girl who had been denied admission to



her neighborhood school because of her race. In 1867, the court held that segregated schools were inherently unequal when it stated that “the law makes no distinction as to the right of children ... to attend the common schools.” To do otherwise, the court concluded, would violate the spirit of our laws and perpetuate racial strife. It was not until 86 years later when the U.S. Supreme Court ruled against segregated schools—in *Brown v. Board of Education* (1954).

The sculpture “Shattering Silence,” located just west of the Iowa Judicial Building, recognizes the historic 1839 Iowa Supreme Court decision, *In the Matter of Ralph* holding that “no man in the territory can be reduced to slavery.” The sculpture’s broader representation salutes the far reaching scope of early historic civil rights cases from the Iowa judiciary including the *Clark* decision.

Des Moines artist James Ellwanger created the 30-foot sculpture.

Condition of the Judiciary 2018

Mister president, madam speaker, distinguished members of the Iowa General Assembly, Governor Reynolds, state officials, colleagues, family, friends, and everyone who joins us this morning to hear the condition of Iowa's judicial system.

One of the simple pleasures in my life was the opportunity to drive my daughter to her grade school in the morning. It did not occur often enough, but enough to produce a lasting memory—not from any words spoken, but from the moments I spent watching her walk from the car to the school door. Before she disappeared inside for the day, she always looked back to see if I was still there for her.

Everyone is dependent upon the support of others, and each year the courts look to you for support. Not just your financial support to maintain our current level of services to Iowans or to keep the courthouse doors open. But, consistent with the expectations of Iowans, the support for our court system to continue to innovate, to be a part of transformational change, to be the very best we can be.

Our founders built government for all Americans to grow to be better than we once were—to form “a more perfect union.” And they created a court system to work towards this end in perpetuity. As from the beginning, the court's role in this pursuit of a “more perfect union” is to advance justice through decisions made to resolve disputes. Yet, this goal can also be achieved as much, if not more, by changes made to the process of justice—changes in the way courts do their work. As with any successful business and industry, a

court system today must constantly examine the way it works, ask if better ways exist, and incorporate proven new ideas and technologies. This is what Iowa's court system must do.

So, as we begin this new year, the Iowa court system pauses again to look back at you for your support. We look back with a deep appreciation for the support shown to us in the past, and we look forward with hope your support will grow in the future. Iowa's court system is at its best when your support allows us to provide the level of services needed to best serve Iowans. Let me share with you examples of how the changes the court system is currently making to the process of justice are improving the lives of Iowans, beginning with the services we provide to Iowa's children.

The Process of Justice Serving Iowa's Children

Juvenile judges and juvenile court officers continue to serve the needs of children and families, and new stories of success continue to emerge from juvenile courts, diversion courts, and family treatment courts. These stories confirm that the innovative approaches to delivering justice I have highlighted for you over the last few years are working. These stories show how thoughtful changes to the process of justice transform hope into real opportunity for more children and their families and save millions of dollars for taxpayers. Better outcomes are achieved when the process of justice not only holds children accountable for their actions but holds them accountable to overcome the problems responsible for their criminal acts without imposing unnecessary burdens that only hold them back.

Juvenile courts and diversion programs continue to keep more children out of the formal court system by using community-based programs to address their needs and hold

them accountable for their actions. While some children need to face the full force of the court system, we have learned most do not. Most children only need a process of justice that best assures their potential will be discovered and achieved. This is what the process of justice must be for all of Iowa's children.

One such juvenile program located in Polk County is called "Too Good To Lose." It is the only court program in the state, and one of the few in the nation, exclusively devoted to the unique challenges teenage girls face. All of the girls in the program committed criminal acts. All have turned to drugs. Some are mothers. Yet, they are all still children who, too many times, looked back for support that was not there. Children too young to understand they had also become victims—of sexual assault, domestic violence, or human trafficking. Children in need of a process of justice that sees them as too good to lose.

The mission of Too Good To Lose is to ensure that these girls are safe, remain drug free, receive an education, give back to the community, and heal. Since March 2016, 17 girls have entered the program, and 6 have now graduated. The success of this program can be attributed to the unique bond between the judge who oversees the court, the juvenile court officer who supervises the girls, the women from the community who come into court and share their experiences with the girls, and the girls themselves who now have people in their lives that they can look back to for support.

After I attended a graduation ceremony last November, the girls in the program sent me a thank you note. One wrote, "Thank you for joining me on my journey." Another wrote "you rock." While I'm not sure about the meaning of "you rock," I inquired further

into the meaning of the journey I had joined that day. She wrote about it in an essay with these words:

Depression slowly crept into the night and I began to find myself drowning in my own tears. While living restless, I was having no motivation to get up in the morning. I was on the verge of giving up. I was unbelievably close. It was so out of control that I began to have legal problems and was on probation for using substances. Home wasn't any better and I believe at that point I did give up. I didn't care what happened to me, I was just reckless, falling into a deeper hole before I knew it.

Today, this young girl is on track to graduate from Too Good To Lose and from high school, with college in her future and dreams to pursue. Her journey is our journey. Too Good To Lose needs to become a movement, a movement that begins in Iowa. Every child is too good to lose. We must not stand by and allow any one of them to be left behind. This is what the process of justice must be for Iowa's children.

The Process of Justice and Problem-Solving Courts

Too Good to Lose is part of a comprehensive commitment by the court system to build a process of justice that not only holds offenders accountable for their crimes but, when possible, gives them the tools needed to overcome the problems behind the criminal conduct. When rehabilitation is achieved without imprisonment, justice is advanced and the expense of incarceration is avoided.

Currently, 47 problem-solving courts are operating in Iowa, including 20 adult drug courts, 4 mental health courts, and 1 veterans court. The mental health court in Scott County has been operating for just over a year, and in that short time, 19 individuals have successfully participated in the program. All of the individuals are connected with a doctor and are medication compliant. For these offenders, this achieves rehabilitation. This court

is a small but important step in addressing the mental health needs of Iowans who have violated the law. It shows how improving the process of justice leads to better outcomes and how expanding these courts statewide would benefit more Iowans. It is also a step that shows the benefits of avoiding the expense of attempting to treat mental health needs through incarceration. In its brief existence, the Scott County mental health court has generated a cost avoidance of over \$300,000. This is what the process of justice must be for all Iowans.

The Process of Justice in the Criminal Justice System

We continue to explore ways to improve the process of justice to achieve better results from the criminal justice system. In doing so, we have learned of the substantial and often unnecessary collateral consequences for Iowans who are financially unable to pay their bail when arrested and remain in jail. These consequences include separation from family, loss of job, loss of housing, and much more. While bail must always serve to protect the public and ensure future appearances in court, it should never serve to incarcerate solely because the person does not have the financial ability to post bail.

For more than a year we have been working with the department of corrections to develop a new public safety assessment for judges to use in deciding whether to release or detain criminal defendants before trial. The assessment was developed from years of data and research by the Arnold Foundation. It is designed to assist judges in making evidence-based release or detention decisions. The assessment does not replace a judge's discretion, but it enhances a judge's ability to determine the public safety risk of the person appearing before the bench. Other states using this assessment have safely experienced a reduction in

their jail populations and pretrial crime rates. We expect similar outcomes will be achieved in Iowa. But most importantly, this approach is aligned with our pursuit to improve justice. Criminal offenders should be punished pursuant to a sentence prescribed by law, not by unnecessary and unfair consequences of the process of justice itself. This is what the process of justice must be for all Iowans.

Investing in the Process of Justice

With every step we take to improve the process of justice, we also make justice more efficient and less costly to Iowa taxpayers. Last year, Iowa's juvenile diversion programs diverted more than 10,000 children from the formal court system. These programs alone avoided more than \$14 million in costs to other parts of the state budget. Family treatment courts served more than 300 families last year generating a cost avoidance of more than \$3.5 million in the human services budget. Other specialty courts avoided \$4 million in costs. These programs are in addition to the \$146 million the Iowa court system collects for the general fund. Last year, the total return on investment in your court system was more than \$178 million. Your investment in the process of justice benefits Iowa's taxpayers.

Let me mention two additional steps taken last year to improve the process of justice.

First, in October, the supreme court formed a commission to find better ways to ensure that juries reflect the diversity of each community. Juries make decisions that have a profound and lasting impact on the lives of Iowans. These decisions are improved when diverse thoughts and experiences are shared and considered. So is public confidence in the process of justice. So is the promise of justice for all. Your court system is better when

there is public confidence in the fairness of the criminal justice system. This is what the process of justice must be for all Iowans.

Second, the supreme court issued a courthouse security order in June last year to enhance the safety and integrity of our process of justice within each courthouse. In December, the order was modified so our county partners can have greater leeway to assist in this mission. I just want you to know that we are committed to working with you and with counties, sheriffs, legislators, law enforcement, and others to achieve the common goal of protecting Iowans who conduct business and work in county courthouses. Courthouse security is inseparable from the concept of justice itself.

Current Challenges to the Process of Justice

While it is nice to report on our progress towards justice for all, I feel obligated to also report on our shortcomings. These deficiencies are not what Iowans expect or deserve. They are growing in number, as are consequences.

We must remember that justice ultimately comes from the people who work in the justice system. Today, the court system employs 182 fewer people than authorized just one year ago. This is a 10% reduction in workforce. As expected, efficiencies gained through the integration of technology into our operations account for some of the workforce reduction. But, we are currently operating with 115 essential positions unfilled, and this number is growing. This means there are fewer judges, fewer court reporters, fewer case schedulers, and fewer juvenile court officers. It means there is a daily struggle to coordinate and deliver services. It means Iowans are losing access to justice. Two years ago, I told you about our commitment that all cases would be timely tried on the date set for trial, without

delay. We have been forced to walk back from this pledge because we do not have enough people to do the work to keep it. So, the delays we were rapidly eliminating from the process of justice are returning and affecting your constituents who need our services to resolve their disputes. But that is not all. Today, Iowans who reside in rural areas are receiving fewer court services than the Iowans in urban areas. Today, a freeze on new specialty courts exists so that the critical services provided by a specialty court in one county are not being provided in another county. Today, I am concerned all of this causes us to lose our focus on the quality and promise of justice. This is not what the process of justice should be.

In past years, I have reported on the benefits that technology is giving Iowa's court system and its process of justice, including our paperless filing system. Yet, last October, the technology that supports the electronic filing system failed unexpectedly and could not be used for a week. This crippling situation resulted from an inadequate backup system, which we know needs to be upgraded with better technology to prevent a future system outage. The outage meant Iowans were unable to file or access court documents, and judges were unable to access and work on court files. This must not happen again. This is not what the process of justice should be.

These shortcomings, and others, are mostly the result of insufficient resources, and the shortcomings continue to be revealed in new ways every day. They are also beginning to tear at the very fabric of our operation and mission. Ominous signs are appearing. This year, more judges will be retiring than in previous years. For the last decade now, fewer and fewer private practice attorneys are seeking a career on the bench. Civil case filings continue

to decline, as lawyers and litigants choose to pursue alternative means to resolve disputes. This is not what the process of justice should be.

Overall, the writing is on the wall. Our shortcomings and their consequences have not gone unnoticed in the most recent ratings of the 50 state court systems from the United States Chamber of Commerce. In past years I have spoken of these ratings to illustrate our success. This last year, Iowa fell from its proud position as the fourth best court system in the nation to thirteenth place. This is not the direction a justice system should be headed. This is not how our process of justice should be seen.

Future Challenges to the Process of Justice

With your support, however, our shortcomings today can be opportunities to be a better court system tomorrow. We know additional challenges lie ahead, but with your continued investment, these too can be opportunities. So, as we work to overcome our current challenges to better our process of justice, we must also prepare to meet the challenges ahead.

One challenge can be seen in the growing signs that the opioid crisis has reached Iowa. While this will be a challenge for all, Iowa courts must prepare to respond now. Court services will be an essential part of the collective effort to minimize the loss of life and the devastation inflicted on families in our state. Fortunately, we know that family treatment courts and drug courts are up to the task. These courts, however, must be expanded and retooled to address the myriad issues families and children confront when affected by opioid addiction. This is what the process of justice must be.

Not all challenges are as visible as the opioid epidemic. Cybersecurity has rapidly emerged as a vital issue for the court system. The electronic filing system now stores more than 20 million documents containing sensitive personal information, corporate data, and intellectual property. As in the private sector, courts need to invest in technology and take all necessary steps to ensure that Iowans' vital information is secured and protected against cyberattack and natural disasters. This is what the process of justice must be.

Yet, the greatest challenge facing the court system today is the unprecedented technological transformation rapidly shaping the way we communicate, think, and even live together. As in most aspects of life, it is giving rise to innovations and new industries that are displacing existing industries, even those that seemed impervious to change just a few years ago. The court system and the legal profession are not immune from this movement and will be challenged in significant ways very soon. The problem with disruptive innovation is not the change it brings, but the failure of existing systems to recognize it and adapt. The Iowa court system, like successful businesses today, needs support to integrate new technologies so the delivery of our services meets the expectations of Iowans. However, the Iowa court system is more than a business; its constitutional and common law components are essential to the future and must never be displaced.

A Defining Moment in Iowa's Process of Justice

From my perspective, there could not be a more important time to support Iowa's courts, or reasons more compelling. But the most important reason for supporting our courts is illustrated by looking back at one of the most important legal cases in Iowa's

history. So it is fitting that this year we celebrate the 150th anniversary of this case and its importance today.

The case is called *Clark v. Board of Directors*. It was brought by an Iowan named Alexander Clark, who lived with his family in Muscatine. He turned to the courts in 1868 after his twelve-year-old daughter, Susan, was denied admission by the local school board to the public school in her neighborhood. She was denied admission because she was born to African-American parents. A separate school was located a mile away for African-American children to attend. I think Alexander Clark must have seen his daughter, too many times, look back at him for support when she walked past the door of her neighborhood school without entering. So, he turned to the process of government established by our forefathers and asked Iowa's courts for help.

The district court ordered the school board to admit Susan Clark to her neighborhood school, and an appeal brought the case before the Iowa Supreme Court. The supreme court found the school board's decision was supported by the prevailing sentiment of the community, as well as many other communities, but not by the laws and the constitution of our state. The court rejected the concept of segregated schools for Susan Clark and all children in Iowa.

The court wrote that just as a school board could not "require the children of Irish parents to attend one school, and the children of German parents another, the children of Catholic parents to attend one school, and the children of Protestant parents another," it could not require Susan Clark to attend a separate school for African-Americans. It then

etched these iconic words into our history: “all the youths are equal before the law,” and no institution of government has discretion “to interfere with or disturb that equality.”

The case was a defining moment for Iowa and the nation. It occurred 86 years before the United States Supreme Court would follow in *Brown v. Board of Education*. It occurred at a time when there was a strong public sentiment for segregated schools but a stronger commitment by our courts to uphold the rule of law. It was a moment in time that shined a beacon of light on the process of justice for all time.

Affirming the Process of Justice

The last word written by the court on that day in 1868 was “affirmed.” It was written to affirm the decision of the district court, but it did much more that day. It affirmed Susan Clark as equal with every other child. It affirmed all Iowans as equal. It affirmed a new public sentiment for the future. It affirmed a process of justice in Iowa where one person can turn to the courts for justice and make a difference for all.

So, the *Clark* case is not just a celebration of an important principle of law. It gives us an important perspective and understanding to see the promise and value of our court system at this critical time today and the best reason in the world to support our courts. It gives us an opportunity to reaffirm Iowa’s commitment to justice today in a way that will allow generations to look back 150 years from today and celebrate another defining moment in our history.